

**In The Matter Of:**

*Micahel D. Rose, et al. v*

*Betsy Jividen, et al.*

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*Betsy Jividen*

*June 30, 2023*

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Charleston City  
**REPORTERS**

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*Min-U-Script® with Word Index*

<p style="text-align: right;">Page 93</p> <p>1 Q. Why was there a freeze on the per diem?</p> <p>2 <b>A. I don't know why there was a freeze. I</b></p> <p>3 <b>know that the end result was that say to help save</b></p> <p>4 <b>the counties money and that DCR absorbed that</b></p> <p>5 <b>difference between the per diem rate set by the</b></p> <p>6 <b>budget office and the per diem rate that's frozen.</b></p> <p>7 Q. Douglas says in this article that the</p> <p>8 freezing of the per diem has cost about \$100</p> <p>9 million, correct?</p> <p>10 <b>A. If that's the figure he gave, yes. I know</b></p> <p>11 <b>that the first year it was probably five or six</b></p> <p>12 <b>million and that's calculated maybe in the annual</b></p> <p>13 <b>reports.</b></p> <p>14 Q. Douglas said that the counties have saved</p> <p>15 more than 100 million over the past several years</p> <p>16 and avoided jail fees with the State now bearing 60</p> <p>17 percent or more of the burden of jail costs.</p> <p>18 Do you have any reason to disagree with</p> <p>19 that?</p> <p>20 <b>A. No.</b></p> <p>21 Q. So does it make sense that if the per diem</p> <p>22 had not been frozen by statute July 1 of '18 that</p> <p>23 the counties could have or would have contributed</p> <p>24 about \$100 million to this deferred maintenance at</p>	<p style="text-align: right;">Page 95</p> <p>1 or \$48.25 a day, that would have freed up money</p> <p>2 elsewhere even if that additional per diem --</p> <p>3 <b>A. If it couldn't be used for one thing, it</b></p> <p>4 <b>could be used for another.</b></p> <p>5 Q. Yes.</p> <p>6 In your four-and-a-half years that you</p> <p>7 were the Commissioner of DCR, what types of</p> <p>8 meetings, conferences did you have with</p> <p>9 representatives from counties about their role in</p> <p>10 the regional jails?</p> <p>11 <b>A. So I attended some of the Regional Jail</b></p> <p>12 <b>Board meetings where that was obviously discussed.</b></p> <p>13 <b>But I wouldn't say that the -- at that point the</b></p> <p>14 <b>per diem was still frozen so we weren't -- you</b></p> <p>15 <b>know, we weren't engaged in what's going to happen</b></p> <p>16 <b>when it expires. I do not -- I did a presentation</b></p> <p>17 <b>to county commissioners when I was first there and</b></p> <p>18 <b>basically what we were trying to say was don't send</b></p> <p>19 <b>so many people to jail. I mean, it wasn't really</b></p> <p>20 <b>based on the per diem fix itself. So I can't</b></p> <p>21 <b>recall any meetings that I had with county</b></p> <p>22 <b>representatives.</b></p> <p>23 Q. Where does the deal for counties to house</p> <p>24 their inmates at regional jails come from? Is that</p>
<p style="text-align: right;">Page 94</p> <p>1 least?</p> <p>2 <b>A. Well, the 100 -- the counties would have</b></p> <p>3 <b>been responsible for one \$100 million, yeah.</b></p> <p>4 Q. And that \$100 million would have gone to</p> <p>5 things like the 50 to 60 million to pay the</p> <p>6 understaffing and towards maintenance costs?</p> <p>7 <b>A. So I am not sure what the statute says per</b></p> <p>8 <b>diem -- what per diem monies can be used for, is</b></p> <p>9 <b>restricted to certain -- to certain things. So I</b></p> <p>10 <b>don't know whether that per diem would have</b></p> <p>11 <b>necessarily gone into maintenance, but whatever it</b></p> <p>12 <b>went into would have freed up money for other</b></p> <p>13 <b>things. So I think we are both saying the same</b></p> <p>14 <b>thing.</b></p> <p>15 Q. Sure.</p> <p>16 And so I understand having been in the</p> <p>17 Army the concept of different colored money?</p> <p>18 <b>A. Uh-huh.</b></p> <p>19 Q. And what we're talking about here is this</p> <p>20 governmental concept of different colored money,</p> <p>21 different buckets of money, correct?</p> <p>22 <b>A. Basically, yes.</b></p> <p>23 Q. Yes.</p> <p>24 So if the counties weren't frozen at 25 --</p>	<p style="text-align: right;">Page 96</p> <p>1 by statute, by contract or what? Memorandum of</p> <p>2 understanding?</p> <p>3 <b>A. I don't know of -- I don't know of any</b></p> <p>4 <b>memorandum. My understanding is that by statute</b></p> <p>5 <b>certain counties have to send their people to</b></p> <p>6 <b>certain regional jails. I'm not sure if that's</b></p> <p>7 <b>what you're asking.</b></p> <p>8 Q. Yes.</p> <p>9 <b>A. That's my understanding. I know that that</b></p> <p>10 <b>was one of the things that we looked at as a</b></p> <p>11 <b>possible fix was can you take them anywhere -- can</b></p> <p>12 <b>you go anywhere. But, yes, that's set by statute</b></p> <p>13 <b>as far as I know.</b></p> <p>14 Q. And you've read the Complaint in this</p> <p>15 case, correct?</p> <p>16 <b>A. I would -- I've read a lot of it. I</b></p> <p>17 <b>skimmed it. It came after I left.</b></p> <p>18 Q. Have you -- yes, it did. But as a named</p> <p>19 defendant, I would have thought you may have looked</p> <p>20 at it.</p> <p>21 Have you by chance looked at West Virginia</p> <p>22 Code 7-8-2(a) in effect since January the 1st of</p> <p>23 1949 that says what the counties shall do with</p> <p>24 inmates?</p>

<p style="text-align: right;">Page 97</p> <p>1 <b>A. I haven't looked at it. If I have, it's</b>  2 <b>been a long time ago and I haven't looked at it.</b>  3 Q. Did you ever have any meetings where that  4 issue under that statute was brought up of what was  5 the county's responsibility for, how was this per  6 diem arrived at?  7 <b>A. No. If it was something statutory that</b>  8 <b>probably would have been handled by our legal</b>  9 <b>department.</b>  10 Q. And you mentioned earlier what the per  11 diem is for. You said the per diem money can only  12 be spent on certain things?  13 <b>A. I know that there are -- I know that there</b>  14 <b>are some restrictions, and I'm not sure whether</b>  15 <b>maintenance is one of them.</b>  16 Q. Is the per diem money to be used for food?  17 <b>A. Yes.</b>  18 Q. Is the per diem money to be used for  19 clothing?  20 <b>A. Yes. Medical.</b>  21 Q. Medical.  22 <b>A. Food -- you already said food.</b>  23 Q. Hold on just a second.  24 <b>A. And I would have to go back and look</b></p>	<p style="text-align: right;">Page 99</p> <p>1 <b>A. It's consistent with the -- and the policy</b>  2 <b>too.</b>  3 Q. And the policy?  4 <b>A. Yes.</b>  5 Q. Was there ever in your four-and-a-half  6 years as Commissioner analysis of whether that  7 \$48.25 was sufficient to pay for the requirements  8 of that statute: The food, the bedding, clothing  9 and the hygiene?  10 <b>A. So -- sorry. Excuse me. So the budget</b>  11 <b>office every year calculates the per diem and they</b>  12 <b>have a formula. And they calculate what the actual</b>  13 <b>per diem would be. And I think it's 53 or 54</b>  14 <b>something. That's what's calculated -- that would</b>  15 <b>be the analysis of the calculation of what it</b>  16 <b>actually costs as opposed to the amount that's</b>  17 <b>frozen.</b>  18 Q. And so it is fair to say then that Chief  19 of Staff Douglas or someone to come up with that  20 \$100 million figure has had a number of prisoners  21 coming through and if there is a difference between  22 the 48 and a quarter and the 53 or 54 and some  23 changes, that's how the State of West Virginia  24 comes up with a figure like that 100 million dollar</p>
<p style="text-align: right;">Page 98</p> <p>1 <b>because I'm kind of spit balling on that.</b>  2 <b>MR. NEW:</b> Let's go off the record. We'll  3 take our next break.  4 <b>VIDEOGRAPHER:</b> This concludes part two.  5 The time is 3:22 p.m.  6 (Break in proceedings.)  7 <b>VIDEOGRAPHER:</b> This is the beginning of  8 part three. The time is 3:30 p.m.  9 <b>BY MR. NEW:</b>  10 Q. We were talking about per diem paid by the  11 counties. West Virginia Code § 7-8-2 cap A parens  12 a, On or after January 1, 1949, the county  13 commission of each county shall provide wholesome  14 and sufficient food and clean and sufficient  15 bedding for all prisoners confined in the county  16 jail and shall furnish the soaps, disinfectants,  17 and other supplies needed by the jailer in  18 performance of his duties. I break those down to  19 food, bedding, clothing and a hygiene. Is that  20 what the \$48.25 a day per diem is spent on?  21 <b>A. Yes.</b>  22 Q. So the spending of that \$48.25 is  23 consistent with the statute I just read you,  24 correct?</p>	<p style="text-align: right;">Page 100</p> <p>1 figure, correct?  2 <b>A. Correct, because it's paid by DCR that</b>  3 <b>difference.</b>  4 Q. Right. The difference is paid by DCR?  5 <b>A. Correct.</b>  6 Q. In other words, the State of West Virginia  7 absorbs that cost on the difference of what the  8 counties are paying and what the actual per diem  9 cost is?  10 <b>A. Correct.</b>  11 Q. That's not really my question though.  12 <b>A. Sorry.</b>  13 Q. And my question is -- and maybe you  14 answered it. Maybe. Did the budget office  15 actually analyze then it costs us 54 or \$53,  16 whatever, to feed, clothe, bed and give hygiene  17 products to these inmates?  18 <b>A. So I am not -- I am not familiar. I have</b>  19 <b>seen what they do. I couldn't recite it to you.</b>  20 <b>But it's a formula that they use and it's</b>  21 <b>different -- I know that they're doing an analysis</b>  22 <b>because it's been different by a few cents or, you</b>  23 <b>know, a little bit every year that I've seen it.</b>  24 <b>It goes up a little bit.</b></p>